

Indiana Department of State Revenue

Revenue Ruling # 2008-01ST

February 25, 2008

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax – Sale of Religious Publications

A religious organization, granted tax exempt status by the Internal Revenue Service under IRC § 501(c)(3), plans on selling books and written materials over the Internet is seeking an opinion as to the taxability of such sales.

STATEMENT OF FACTS

The religious organization plans to sell written and recorded materials consisting of religious books, booklets, audiotapes, CDs, videotapes and DVDs over the Internet. The taxpayer's mission is to serve the church by promoting biblically balanced spiritual warfare training and counseling. No part of the earnings of the taxpayer's organization benefits any private shareholder or individual. The taxpayer is headquartered in Indiana and its employees present Biblical pastoral training courses and religious training courses in Indiana and elsewhere. The taxpayer also sells religious books and other materials at the training courses. These religious books and other materials, sold at the training courses, are the same type of materials that the taxpayer intends to sell over the Internet. The books, booklets, audiotapes, CD's, videotapes and DVDs counsel readers and viewers on religious matters. The taxpayer produces and/or publishes some of the items from the educational counseling programs that it presents. Other items will be purchased and/or published by outside parties. Taxpayer will make the sales via the Internet website and will ship all items via common carrier.

Taxpayer is questioning whether the sale of such material on line is exempt to customers throughout the nation, including Indiana. Taxpayer is headquartered in Indiana and produces some of items from educational counseling programs that it presents. Other parties publish other items that are sold on line.

DISCUSSION

Indiana Code, 6-2.5-5-26(a) provides in relevant part:

- a. Sales of tangible personal property are exempt from sales/use tax, if:
 - (3) The organization does not make those sales more than 30 days in a calendar year,

Indiana Code, 6-2.5-5-26(b) states:

- b. Sales of tangible personal property are exempt from sales/use tax, if:
 - (1) The seller is an organization that is organized and operated exclusively for religious, charitable, scientific, literary, educational or civic purposes if no part of its income is used for the private benefit or gain of any member, trustee, shareholder, employee or associate. [Taxpayer is exempt under IRC § 501(c)(3)]
 - (2) The seller is not operated predominantly for social purposes.
 - (3) The property sold is designed and intended primarily either for the organization's educational, cultural, or religious purposes, or for improvement of the work skills or professional qualifications of the organization's members.
 - (4) The property sold is not designed or intended primarily for use in carrying on a private or proprietary business.

Indiana Administrative Code, 45 IAC 2.2-5-58(b) clarifies the above code section by stating that:

- b. The gross receipts from each sale of tangible personal property by a qualified not-for-profit organization are exempt under this rule only if:
 - (1) The nature of the property sold will further the educational, cultural or religious purposes of the organization; and
 - (2) The organization is not carrying on a private or proprietary business with respect to such sales.
- c. Furthering the educational, cultural or religious purposes. The primary purpose of the property sold must be to further the educational, cultural or religious purposes of the qualified not-for-property organization.

It should be noted that the "thirty (30) day sales rule" exemption from collecting Indiana sales/use tax found in IC 6-2.5-5-26(a) is not applicable to this organization as the organization's sales occur on-line year around.

It is clear that for the organization's sales of religious materials to qualify for sales tax exemption the sales must be made in the furtherance of the educational purposes of the taxpayer's organization and not in carrying on "a private or proprietary business". Information Bulletin No. 68 defines the phrase "proprietary activities" for colleges and universities as activities generating revenues for state colleges or universities [this religious organization] from the general public that are customarily associated with the conduct of a private business enterprise.

RULING

The Department rules that the religious items produced and/or published by this religious organization and sold to Indiana customers are exempt from the collection of Indiana sales/use tax. The sale of books, booklets, audiotapes, CDs, videotapes and DVDs published and/or produced by others and re-sold to Indiana customers are subject to the collection of Indiana sales/use tax.

The above answer would not change if the materials were sold in person rather than over the Internet.

Indiana law does not impose a sales/use tax on training fees that are stated separately and where the material content included with the fee does not exceed 10% of the sales price.

There is no sales/use tax permit in Indiana if your client is registered for sales/use tax as a retail merchant, that is all that is required. You need to ensure that your client is registered as a retail merchant and not simply as a non-profit organization. If your client needs to register as a retail merchant, they need to complete Form BT-1 and submit the \$25 fee. www.dor.in.gov

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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